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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,400	03/23/2004	Steven T. Fink	244566US6YA	2352
22850	7590	07/22/2005	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			GUADALUPE, YARITZA	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 07/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/806,400

Applicant(s)

FINK, STEVEN T.

Examiner

Yaritza Guadalupe McCall

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-24 is/are allowed.
- 6) ☒ Claim(s) 1-13 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of the invention elected in the reply filed on June 27, 2005 is acknowledged. The traversal is on the ground(s) that the Restriction Requirement did not establish an undue burden if the Restriction Requirement was not issued and all the claims were examined together and that the claims of the present invention would appear to be part of an overlapping search area.

The examiner finds this argument persuasive and accordingly, the Restriction Requirement is withdrawn and all pending claims are rejoined for examination on the merits.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 – 4, 6 – 13 and 25 are rejected under 35 U.S.C. 102 (b) as being anticipated by Bakke et al. (US 5,875,558).

With respect to claim 1, Bakke et al. discloses a gauge comprising a main body (2) configured to be grasped by a user of the gauge; a verifying feature (3, 6) configured to verify whether a dimension of a feature of the process kit part violates a prescribed size tolerance, wherein a violation of the prescribed tolerance indicates excessive wear of the process kit part or excessive material deposits on the process kit part; and an identification feature (9) configured to uniquely associate the gauge with at least one of said process kit part and a process to which the process will be exposed.

In regards to claim 2, Bakke et al. also discloses a gauge wherein the main body comprises at least one of plastic or metal (See Column 2, line 39).

Regarding claim 3, Bakke et al. further discloses a gauge comprising a company identification mark (Nut Sizer TM) visibly provided on a surface of the gauge (See Figures).

With regards to claim 4, Bakke et al. also shows a gauge further comprising a tool (4) configured to perform a simple function other than said verifying whether a dimension of a feature of the process kit part violates a prescribed size tolerance.

In regards to claim 6, Bakke et al. also teaches a gauge wherein said verifying feature (9) comprises a plurality of verifying features each configured to verify whether a dimension of a feature of the process kit part violates a prescribed size tolerance.

Regarding claims 7 and 8, Bakke et al. also teaches a gauge wherein the verifying feature (9) comprises a protrusion for verifying that the dimension exceeds the prescribed size tolerance and a protrusion for verifying that the dimension is smaller than the prescribed size tolerance.

In regards to claims 9 and 10, Bakke et al. discloses a gauge wherein the verifying feature comprises a cavity for verifying that the dimension exceeds the prescribed size tolerance and a cavity for verifying that the dimension is smaller than the prescribed size tolerance.

Regarding claim 11, Bakke et al. further discloses a gauge wherein the identification feature comprises a unique configuration of said verification feature that is specific to said process kit part.

With respect to claim 12, Bakke et al. also shows a gauge wherein the identification feature comprises a unique marking that specifies at least one of said process kit part (i.e., nut), a feature of the process kit part (i.e., size) and a process to which the process kit part will be exposed.

In regards to claim 13, Bakke et al. also discloses a gauge wherein said unique marking comprises a symbol (i.e., indicia) associated with said at least one of said process kit part, said feature of the process kit part and said process.

With regards to claim 25, Bakke et al. teaches a gauge comprising means (3, 6) for verifying whether a dimension of a feature of the process kit part violates a prescribed size tolerance; and means (9) for uniquely associating the gauge with at least one of said process kit part, a feature of said process kit part, and a process to which the process kit part will be exposed.

With respect to the intended uses : the examiner points out that a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the structural limitations are able to stand alone. See In re Hirao , 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and Kropa v. Robie , 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. In re Schreiber, 44 USPQ2d 1429 (Fed. Cir. 1997).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bakke et al. (US 5,875,558).

Bakke et al. discloses a tool as stated in paragraph 2 above.

Bakke et al. does not disclose the tools as stated in claim 5.

Regarding claim 5 : Bakke et al. teaches a gauge having a measuring tool for nut sockets. The use of the particular type of tools claimed by applicant, i.e., screwdriver, measuring scale, and letter opener, absent any criticality, are considered to be nothing more than a choice of engineering skill, choice or design because the use of the particular type of tools by Applicant are considered to be nothing more than the use of one of numerous and well known alternate types of tools that a person having ordinary skill in the art would have been able to provide using

routine experimentation in order to provide a versatile all in one tool that is easy to use and of compact size as already suggested by Bakke et al.

Allowable Subject Matter

6. Claims 14 – 24 are allowed.

Conclusion

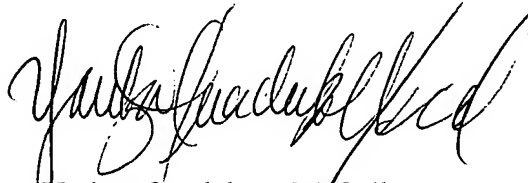
7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following reference are considered of relevance to the present application :

- a. Bakke et al. (US 6,904,690)
- b. McDonald (US 5,471,757)
- c. Wong (US 5,131,158)
- d. Palma (US 4,151,652)
- e. Kuebler (US 2,514,956)
- f. Atwood (US 1,626,176)
- g. Sevastian (US 6,748,667)
- h. Barefoot (US Pub. No. 2004/0045180)
- i. Barefoot (US 6,637,121)
- j. Larsen (US 4,858,330)

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe whose telephone number is (571)272 -2244. The examiner can normally be reached on 9:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yaritza Guadalupe-McCall
Patent Examiner
Art Unit 2859

YGM
July 21, 2005